



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 17250253

DATE: JULY 23, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for an Advanced Degree Professional

The Petitioner, a coffee manufacturing business, seeks to employ the Beneficiary as an account manager. It requests classification of the Beneficiary as an advanced degree professional under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the ground that the proffered position is ineligible for classification as an individual of exceptional ability because the minimum requirements for the job, as set forth in the labor certification, did not demonstrate that the job requires an individual of exceptional ability.

On appeal the Petitioner asserts that the Director made an erroneous conclusion of law because the Petitioner requested classification of the Beneficiary as an advanced degree professional, not as an individual of exceptional ability. The Petitioner claims that the Beneficiary has the requisite qualifications for advanced degree professional classification, and requests that the petition be approved on that basis.

Upon *de novo* review, we will dismiss the appeal because, regardless of the Beneficiary’s valid claim that the petition requests advanced degree professional classification,¹ and regardless of the Beneficiary’s qualifications for that classification, the petition cannot be approved because the labor certification does not support the classification of advanced degree professional.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies

¹ As originally filed the Form I-140 requested professional classification for the Beneficiary, not advanced degree professional classification. However, the Texas Service Center accepted an amended Form I-140 from the Petitioner, along with a letter clearly stating that the Petitioner is requesting classification for the Beneficiary as an advanced degree professional, not as an individual of exceptional ability, nor as a professional as originally requested.

that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition (Form I-140) with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ANALYSIS

A. The Requested Classification

Section 203(b)(2)(A) of the Act provides that visas may be made available “to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.” Thus, there are two categories of “EB-2” visa classification – advanced degree professionals and individuals of exceptional ability.

The petition in this case was filed at the Texas Service Center on May 20, 2020. On page 1 of the Form I-140 the Petitioner specified at Part 2.1.e. that: “This petition is being filed for a professional (at a minimum, possessing a bachelor’s degree or a foreign degree equivalent to a U.S. bachelor’s degree).” The professional category is a third preference (“EB-3”) visa classification. On June 8, 2020, the Texas Service Center received a letter from the Petitioner’s attorney (dated May 20, 2020) stating that the petition was being amended to request advanced degree professional (“EB-2”) classification for the Beneficiary. The letter was accompanied by an amended page 1 of the Form I-140 changing the classification request to: “A member of the professions holding an advanced degree or an alien of exceptional ability [as specified at Part 2.1.d.]”² The amendment letter was stamped “Action Completed, Approved for Filing” on July 1, 2020, and the new page 1 of the Form I-140 bears a hand-written notation from the Texas Service Center stating “Amended Copy.” Thus, the Texas Service Center accepted the Petitioner’s amendment to the I-140 petition.

On November 3, 2020, the Director denied the amended petition. However, the Director did not analyze the petition on the basis of whether the Beneficiary qualified for the advanced degree professional classification. Instead, the Director determined that the Beneficiary did not qualify for classification as an individual of exceptional ability, which has different requirements from those of an advanced degree professional. The letter that accompanied the amended page 1 of the Form I-140 clearly stated that the Petitioner was requesting classification of the Beneficiary as an advanced degree

² USCIS website guidance states, “Although you may request that we change the visa classification to correct a clerical error in Part 2 of the form, we will make the final determination about whether to change the visa classification based on everything in your case.” USCIS will not accept a request to change a category after a decision has been made. *See* <https://www.uscis.gov/forms/all-forms/petition-filing-and-processing-procedures-for-form-i-140-immigrant-petition-for-alien-worker#Requesting> (last accessed July 8, 2021).

professional, not as an individual of exceptional ability. Therefore, the Director's decision was erroneous because it was not based on the proper classification request.

Accordingly, we will withdraw the Director's decision as it applies to the Beneficiary as an individual of exceptional ability. However, we cannot affirmatively conclude that the Beneficiary, or the offered position as described on the underlying labor certification, qualifies for classification as an advanced degree professional.

B. Classification as an Advanced Degree Professional

The term "advanced degree" is defined in the regulation at 8 C.F.R. § 204.5(k)(2) as follows:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

The labor certification that accompanies the instant petition specifies in section H (Job Opportunity Information) the following requirements for the proffered position of account manager:

4.	Education: Minimum level required:	Bachelor's degree
4-B.	Major Field of Study:	Accounting or Equivalent
5.	Is training required for the job opportunity?	No
6.	Is experience in the job offered required?	Yes
6-A.	If so, how long?	24 months
7.	Is an alternate field of study acceptable?	No
8.	Is an alternate combination of education and experience acceptable?	No
9.	Is a foreign educational equivalent acceptable?	Yes
10.	Is experience in an alternate occupation acceptable?	No
14.	Specific skills or other requirements:	Microsoft Word, QuickBooks, and Excel

As stated in the labor certification, the minimum requirements for the proffered position are a bachelor's degree or a foreign educational equivalent in accounting or an equivalent field and 24 months of experience in the job offered (plus three specific computer software skills). Thus, the labor certification does not require either a master's degree or a bachelor's degree and five years of qualifying experience, which are the minimum alternative requirements for advanced degree professional classification.

Accordingly, the labor certification does not support the petition's requested classification of advanced degree professional, and the petition is not approvable. Since the petition is not approvable, we will dismiss the Petitioner's appeal of the Director's decision.³

ORDER: The appeal is dismissed.

³ If a benefit request does not have a legal basis for approval, and additional evidence would not establish a legal basis for approval, a denial should be issued without first issuing a request for evidence or notice of intent to deny. 1 *USCIS Policy Manual* E.9(B)(1), <https://www.uscis.gov/policymanual>.